



## The Attorney General of Texas

June 21, 1983

JIM MATTOX  
Attorney General

Supreme Court Building  
P. O. Box 12548  
Austin, TX. 78711-2548  
512/475-2501  
Telex 910/874-1367  
Telecopier 512/475-0266

1607 Main St., Suite 1400  
Dallas, TX. 75201-4709  
214/742-8944

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905-2793  
915/533-3484

1220 Dallas Ave., Suite 202  
Houston, TX. 77002-6986  
713/650-0666

806 Broadway, Suite 312  
Lubbock, TX. 79401-3479  
806/747-5238

4309 N. Tenth, Suite B  
McAllen, TX. 78501-1685  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205-2797  
512/225-4191

An Equal Opportunity/  
Affirmative Action Employer

Mr. Robert E. Stewart  
Commissioner  
Department of Banking  
2601 North Lamar  
Austin, Texas 78705

Open Records Decision No. 386

Re: Whether personnel file of former employee and financial records of Department of Banking are available to the public under the Open Records Act

Dear Mr. Stewart:

A former employee of the Department of Banking has asked you to allow him to examine "any and all records and documents related and applicable to" his prior employment at the department, i.e., his "personnel file, leave record(s), etc." In addition, he desires access to a substantial body of departmental records which were kept under his supervision, including the department's expense journal, the fiscal year 1982 general ledger, certain travel vouchers, the fiscal year 1982 disbursements register, and payroll vouchers, including supporting annual and sick leave records.

You have asked us to decide whether this information is excepted from required public disclosure under the Open Records Act, article 6252-17a, V.T.C.S. You contend that sections 3(a)(1), 3(a)(2), 3(a)(3), 3(a)(10), 3(a)(11), and 3(a)(12) are applicable.

Section 3(a)(3) excepts from required disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

At the outset, we note that the fact that the requestor is a former employee of the department does not mean that he has any "special right of access" to any of this information. See Open

Records Decision Nos. 326 (1982); 288 (1981). Any of the requested information which is within section 3(a)(3) is as unavailable to this requestor as it would be to anyone else.

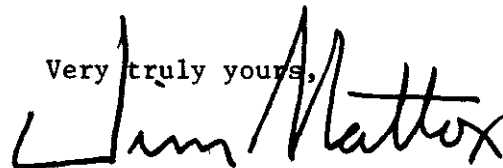
The applicability of section 3(a)(3) is contingent upon (1) whether litigation is either pending or reasonably anticipated and (2) whether the requested information "relates" to the pending or contemplated litigation. See, e.g., Open Records Decision Nos. 351, 326 (1982).

The requestor has filed a complaint of employment discrimination with the Equal Employment Opportunity Commission. A hearing on that complaint is set for June 8, 1983. This office has frequently held that the pendency of a complaint before the commission indicates a substantial likelihood of potential litigation, and is therefore sufficient to satisfy the first prong of the 3(a)(3) test. Open Records Decision Nos. 336, 326 (1982); 281, 270 (1981).

To sustain a claim under section 3(a)(3), it must also be demonstrated that the information at issue "relates" to the pending litigation. The assistant attorney general who represents the department of banking advises that, in this instance, the information consists of records personally created and maintained by the complainant. The complainant is contending that his termination was the result of illegal discrimination, while the department argues that his competence was a significant factor. Thus, the complainant's competence in creating and maintaining the records which are the subject of this request is an issue in the litigation, and the records themselves will be offered in evidence to support the department's position. As a result, we believe that the information in question sufficiently "relates" to the litigation.

It is therefore our decision that the requested information is excepted from disclosure under section 3(a)(3) of the Open Records Act. Of course, any material that is produced or discovered in connection with the EEOC hearing is no longer protected by section 3(a)(3).

Very truly yours,

A handwritten signature in black ink, appearing to read "Jim Mattox". The signature is fluid and cursive, with a large initial "J" and "M".

J I M   M A T T O X  
Attorney General of Texas

TOM GREEN  
First Assistant Attorney General

DAVID R. RICHARDS  
Executive Assistant Attorney General

Prepared by Rick Gilpin  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Susan L. Garrison, Chairman  
Jon Bible  
Rick Gilpin  
Jim Moellinger  
Nancy Sutton  
Bruce Youngblood